

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	Civil Action No. 4:12-CV-00347
Plaintiff,	:	(Judge Brann)
	:	
v.	:	
	:	
DUSTIN B. BOGART,	:	
MARCY A. BOGART,	:	
SOUTHERN COUNTRY RANCH,	:	
Defendants.	:	

MEMORANDUM

August 14, 2013

This action was initiated on February 22, 2012 by the United States of America in connection with the recovery of certain Federal liens. Defendants proceed pro se and have filed a Response to the July 16, 2013 Order, (ECF No. 32), denying Defendants' Motion for Reconsideration (ECF No. 25).

I. BACKGROUND

The United States filed this civil action against Bogart Defendants, who own the real property against which various Federal liens are pending. By this action, the United States seeks to verify the liens against the property, secure rights to that property, and foreclose and sell the property to satisfy the outstanding liens. Defendants filed their first Motion to Dismiss for Failure to State a Claim on July

26, 2012 but failed to include a brief in support of the motion. See Def. Mot., July 26, 2012, ECF No. 6. After the Court denied that motion without prejudice, Defendants filed a second Motion to Dismiss (August 20, 2012, ECF No. 11), followed by a request for an extension of time in which to obtain counsel (August 23, 2012, ECF No. 15). The Court granted the motion for an extension of time and stayed briefing on the Motion to Dismiss pending notification by the Defendants as to whether they wished to file an amended motion to dismiss or stand on the one currently before the Court. August 30, 2012, ECF No. 16.

Since that time, the Court has extended the time period in which Defendants could obtain counsel on three occasions. See ECF Nos. 24, 26, 31. To date, Defendants have yet to obtain counsel but have notified the Court of their intention to file an amended motion to dismiss. See ECF No. 32.

While the Motion to Dismiss was pending, Defendants filed various other motions including the Motion to Strike the Summons Return Executed. August 21, 2012, ECF No. 13. On October 12, 2012, the Court denied that motion, finding that Defendant Southern Country Ranch was properly served with the complaint by way of service upon Defendant Dustin Bogart, who was “a person for the time being in charge” at the usual place of business of Southern Country Ranch. ECF

No. 21. Defendants then filed a Motion to Reconsider this position on January 4, 2013, which the Court subsequently denied on July 16, 2013. See ECF Nos. 25, 32.

II. DISCUSSION

Although Defendants have informed the Court of their intention to file an amended motion to dismiss, they have yet to obtain counsel or explain when or if they expect to do so. See ECF No. 32. Defendants' Response to the July 16, 2013 Order does not attach an amended motion, nor does it advise the Court of when one could be expected to be filed. Id. An answer to the complaint was filed in this action on February 7, 2013 and the matter must now, logically, move forward into discovery and resolution by settlement or at trial.

The Defendants have had nearly one year to obtain counsel and file an amended motion to dismiss – considerable time in which to do both. While the Court is mindful that Defendants are proceeding pro se and are accorded substantial deference in federal court, these litigants are neither free to disregard Orders of this Court nor to seek extensions indefinitely. See e.g., Barndt v. Pennsylvania Dept. of Corrections, 2011 WL 4830181, at *5 (M.D. Pa. Aug. 31, 2011) (Carlson, M.J.) (Party cannot evade his litigation responsibilities simply by

citing the fact that he is a pro se litigant), Jackson v. Pennsylvania, 2008 WL 4132049, at *1 (M.D. Pa. Sept. 2, 2008) (Rambo, J.), Thomas v. Norris, (M.D. Pa. Sept. 8, 2006) (Kosik, J.) (Although a court should liberally construe the pleadings of pro se litigants, they still must follow the Federal Rules of Civil Procedure), Sanders v Beard, 2010 WL 2853113, at *1 (M.D. Pa. July 20, 2010) (Caputo, J.)

Clearly, then, the Court must set a final deadline for the filing of an amended motion to dismiss, regardless of whether Defendants obtain counsel to assist them in that endeavor, so that this action may proceed forward. Accordingly, Bogart Defendants will be given an additional fourteen (14) days in which to file an amended motion to dismiss. If Defendants fail to file an amended motion by the conclusion of that time, the Court will proceed on the motion presently before it and Plaintiff will have fourteen (14) days in which to file in opposition to the motion.

With respect to the remainder of Defendant's Response to Court's order and Explanation on Defendant's Motion for Reconsideration Clarification, (ECF No. 32), Defendants again ask the Court to reconsider its position from the October 12, 2012 Order denying Defendants' Motion to Strike Summons (ECF No. 21). This marks Defendants' third attempt to seek review by this Court of its October 12,

2012 Order. Although the Court notes and acknowledges Defendants' persistence in continuing to make this argument, it is without legal merit.

This Court is aware of no authority – and the Defendants point to none – allowing a court to reconsider, for the third time, its own ruling on a motion. The Court has fully considered, and re-considered its October 12, 2012 Order denying Defendants' Motion to Strike Summons, (see ECF Nos. 24, 31), and respectfully declines Defendants' invitation to continue doing so. Should Defendants remain unhappy with this ruling, they maintain a right of appeal to the Third Circuit after a final judgment in this case.

III. CONCLUSION

For the reasons discussed above, Bogart Defendants will be granted fourteen (14) days in which to file an amended motion to dismiss. Plaintiff will then have fourteen (14) days in which to file an opposition to the same.

BY THE COURT:

s/Matthew W. Brann
Matthew W. Brann
United States District Judge

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SOUTHERN COUNTRY RANCH,	:	
Defendants.	:	

ORDER

August 14, 2013

AND NOW, this 12th day of August, 2013, the Court **ORDERS AND DIRECTS** as follows:

1. Bogart Defendants have fourteen (14) days from the entry of this Order in which to file an amended motion to dismiss. If they fail to file such a motion, the Court will proceed on their original Motion to Dismiss (ECF No. 11).
2. Plaintiff will have fourteen (14) days from the date of service of Defendants' amended motion in which to file an opposition to the same.

BY THE COURT:
s/Matthew W. Brann
Matthew W. Brann
United States District Judge